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In the Supreme Court of the United States

OCTOBER TERM, 1952

KWONG HAI CHEW, PETITIONER

v.

CAPTAIN SVEND COLDING, MASTER OF THE SS "SIR JOHN FRANKLIN," AND EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION AT THE PORT OF NEW YORK

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE RESPONDENT SHAUGHNESSY IN OPPOSITION

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BRIEF FOR THE RESPONDENT SHAUGHNESSY IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 39-45) is reported at 97 F. Supp. 592.[1] The opinion of the Court of Appeals (R. 51-53) is reported at 192 F. 2d 1009.

[1] A later opinion of the District Court, denying petitioner's release on bail pending an appeal, is reported at 98 F. Supp. 717 (E.D. N.Y.).

JURISDICTION

The judgment of the Court of Appeals was entered on December 4, 1951 (R. 54). The petition for a writ of certiorari was filed on February 28, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an alien seaman, who had previously been legally domiciled in this country, can be excluded without a hearing, following his return from a round-trip voyage to foreign ports, on a determination by the Attorney General, based on confidential information, that the alien's entry would be prejudicial to the public interest.

STATUTE, PROCLAMATIONS, AND REGULATIONS INVOLVED

The statute, Presidential Proclamations, and regulations involved are set forth in the Appendix, *infra*, pp. 19-29.

STATEMENT

Petitioner, a Chinese national (R. 8, 30), who had previously been admitted to the United States on several occasions as a seaman, was last admitted to this country on January 10, 1945 (R. 17). He apparently overstayed his shore leave, and on June 22, 1946, he married a native-born American citizen (R. 5, 17, 18, 34). On the basis of this marriage, petitioner applied, in 1949, for suspension of deportation in accordance with the provisions of

Section 19(c) of the Immigration Act of 1917, as amended (39 Stat. 874, 889; 54 Stat. 670, 671; 56 Stat. 1044; 62 Stat. 1206; 8 U.S.C., Supp. IV, 155 (c)).[2] Pursuant to the procedures established under that statute, the application was granted, and his admission for permanent residence was recorded as of the date of his last entry. (R. 4, 17-18, 33.) On April 6, 1950, he filed a petition for naturalization, which is presently pending (R. 4, 13, 21-22, 35). In November 1950, petitioner was screened and passed by the Coast Guard for employment as a seaman on a foreign voyage.

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[2] "(c) In the case of any alien (other than one to whom subsection (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may * * * (2) suspend deportation of such alien if he is not ineligible for naturalization or if ineligible, such ineligibility is solely by reason of his race, if he finds (a) that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien; * * * If the deportation of any alien is suspended under the provisions of this subsection for more than six months, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension. These reports shall be submitted on the 1st and 15th day of each calendar month in which Congress is in session. If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel deportation proceedings. * * *

He left the United States on November 18, 1950, as chief steward on the SS *Sir John Franklin*, which called at a number of ports in Egypt and the Far East (R. 5, 19-20, 23, 34.) On March 10, 1951, the *Franklin* returned to this country, stopping first at San Francisco, California. There, the examining immigrant inspector, on the basis of confidential information that petitioner's entry would be prejudicial to the public interest, temporarily excluded him under the authority of Section 175.57, Title 8, C.F.R. [1949 ed.], *infra*, pp. 27-29. Respondent Colding, as master of the *Franklin*, was thereupon served with an order to detain petitioner on board at all American ports. (R. 8, 21, 23, 30-31.) The vessel then proceeded to Los Angeles, California, and thence to New York, arriving there on March 29, 1951, where the temporary exclusion order was continued in effect. The following day, a new order to detain petitioner on board at all United States ports was served on the master. (R. 4, 9, 31.)

On March 30, 1951, petitioner, through his attorney, filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of New York against respondent Colding, respondent Shaughnessy, as District Director of Immigration and Naturalization at the port of New York, and others, charging that petitioner's detention was in violation of the due process clause of the Fifth Amendment. The writ

issued (R. 2-3), and a return was filed (R. 8-9), reciting the basis of petitioner's temporary exclusion and stating that a decision by the Attorney General was awaited as to whether the exclusion order would be made permanent. Following the filing of a traverse (R. 10-11), the cause came on for hearing before the District Court, with petitioner as the sole witness (R. 12, 17-23). The court reserved judgment, pending the Attorney General's determination (R. 24, 27), and it was stipulated that petitioner might resail on the *Franklin* without rendering the cause moot (R. 26-28).

On April 19, 1951, an amended return was filed (R. 30-32), stating that the Acting Attorney General had ordered that petitioner be denied a hearing before a board of special inquiry, and that he be permanently excluded pursuant to 8 C.F.R. 175.57, *infra*, pp. 27-29. The amended return also stated that petitioner had been transferred to Ellis Island for detention on behalf of respondent Colding. The amended traverse (R. 33-38) alleged that the Coast Guard had denied petitioner permission to sail and that, on information and belief, the denial was solely because of the immigration proceeding pending against him (R. 34).

Without further hearing, the District Court, on the authority of *Knauff* v. *Shaughnessy*, 338 U.S. 537, entered judgment on May 21, 1951 (R. 46), dismissing the writ of habeas corpus and remanding petitioner to the custody of respondents. The

judgment was affirmed by the Court of Appeals for the Second Circuit (R. 54; 51-53).

ARGUMENT

In Section 1(a) of the Act of May 22, 1918, as amended, *infra*, p. 19, Congress declared that "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, * * * and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those [already provided by law] be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall * * * be unlawful * * * [f]or any alien to * * * enter * * * the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe."

Pursuant to the authority thus conferred upon him, the President, by Presidential Proclamation No. 2523 (*infra*, pp. 19-22), ordered that "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

Acting under the above Proclamation, the Secretary of State and the Attorney General jointly issued regulations, which now appear in 8 C.F.R. [1949 ed.], Part 175, pertinent portions of which are copied, *infra*, pp. 24-29. Section 175.53 thereof (*infra*, pp. 24-27) defines eleven categories of aliens whose entry is "deemed to be prejudicial to the interests of the United States." Section 175.57 of the regulations (*infra*, pp. 27-29) provides that "Any alien, even though in possession of a permit to enter, or exempted * * * from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable" under one of those categories; that "Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States"; that, where an official of the Department of Justice temporarily excludes an alien on the ground that he is or may be excludable under one or more of the eleven categories, "no hearing by a board of special inquiry [3] shall be held until after

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[3] In the ordinary case, an arriving alien whose right to enter is questioned is given a full hearing before a board of special inquiry, with the right of appeal to the Attorney General from an adverse decision. See §§ 16 and 17 of the Immigration Act of 1917, 8 U.S.C., Supp. IV, 152, 8 U.S.C. 153, copied in footnote 9, *infra*, pp. 28-29.

the case is reported to the Attorney General and such a hearing is directed by the Attorney General"; and that "In any special case the alien may be denied a hearing before a board of special inquiry * * * if the Attorney General determines that he is excludable under one of the [previously defined] categories * * * on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

Subsequent to the adoption of the above regulations, Proclamation No. 2523 was amended to provide that "* * * no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States." In addition, "all existing regulations" under the original proclamation were ratified and confirmed. See Proclamation No. 2850 (*infra*, pp. 22-23).

In *Knauff* v. *Shaughnessy*, 338 U.S. 537, involving an alien war bride who had been excluded without a hearing on the basis of confidential information that her entry would be prejudicial to the interests of the United States, this Court held that the above procedures were consistent with due process of law. In this connection, the Court pointed out (338 U.S. at 542) that admission is a "privilege * * * granted to an alien only upon such terms as the United States shall prescribe"

and that the privilege "must be exercised in accordance with the procedure which the United States provides." The Court then added (pp. 542-543) that since the right of exclusion "is a fundamental act of sovereignty", stemming both "from legislative power" and "the executive power to control the foreign affairs of the nation", "the decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General." The Court further stated (*ibid.*) that "it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien", citing *Nishimura Ekiu* v. *United States,* 142 U.S. 651; *Fong Yue Ting* v. *United States,* 149 U.S. 698; *Ludecke* v. *Watkins,* 335 U.S. 160. The Court went on to say (p. 544) that the regulations were "reasonable in the circumstances of the period for which they were authorized, namely, the national emergency of World War II."

As we have stated, *supra,* pp. 4, 5, petitioner was excluded under Section 175.57, and, therefore, the same statute, proclamations, and regulations as were involved in *Knauff* provided the basis for petitioner's exclusion. Neither World War II nor the national emergency declared on May 27, 1941, have been terminated. It is to be noted that forces from

this country, along with other forces of the United Nations, are engaged in open hostilities with forces from the country of which petitioner is a subject. We believe, therefore, that there is equally as much reason for these procedures now as there was at the time of *Knauff* and that, as was said there (338 U.S. at p. 546), "the authority upon which the Attorney General acted remains in force."[4]

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[4] Petitioner infers (Pet. 7-8) that his exclusion order was issued under the authority of Section 5 of the Act of October 16, 1918, as added by Section 22 of the Internal Security Act of 1950 (Pub. L. 831, c. 1024, 81st Cong.; 8 U.S.C., Supp. IV, 137-4), which provides: "Sec. 5. Notwithstanding the provisions of sections 16 and 17 of the Immigration Act of February 5, 1917, as amended (39 Stat. 885.887; 8 U.S.C. 152, 153), which relate to boards of special inquiry and to appeal from the decisions of such boards, any alien who may appear to the examining immigration officer at the port of arrival to be excludable under section 1 shall be temporarily excluded, and no further inquiry by a board of special inquiry shall be conducted until after the case is reported to the Attorney General and such an inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under section 1 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any further inquiry by a board of special inquiry and order such alien to be excluded and deported."

However, as has been illustrated above, Section 175.57, 8 C.F.R., under which petitioner was excluded, stems from the Act of May 22, 1918. Since that Act, unlike the Internal Security Act, is special, emergency legislation, we think it is clear, as the Court of Appeals held, that the May 1918 Act was not repealed by the Internal Security Act. The May 1918 Act applies to "any alien", whereas Section 22 of the Internal Security Act applies only to anarchists, Communists, and other subversive classes.

Petitioner contends here (Pet. 8-13), as he did in both courts below, that his case is distinguishable from Mrs. Knauff's in that she had not previously been admitted to the United States, whereas he had had a legal residence, and presently has a petition for naturalization pending, in this country.

It has, however, long been established that an alien who voluntarily leaves the United States, even though resident here, is, upon his return, subject to the same rules of exclusion as on initial entry, even though he was not subject to expulsion before he left, and had been assured before his departure that he would be permitted to reenter. In *The Chinese Exclusion Case,* 130 U.S. 581, a leading precedent on the subject of exclusion, the Court upheld the exclusion of a Chinese laborer who had resided in San Francisco for 12 years, and who left the United States in possession of a certificate, issued pursuant to then existing law, reciting that he was entitled to reenter this country. During his absence, a statute, in contravention of an existing treaty between the United States and China, was passed, prohibiting the entry of aliens of his class. The Court held that the later statute controlled, adding (p. 609) that no alien has a vested right to return to this country, but rather has merely a "license * * * held at the will of the government, revocable at any time, at its pleasure." This same result was reached in *United*

States v. *Trudell*, 284 U.S. 279, 280, as to aliens domiciled in the United States who were in Greece on a temporary visit at the time the 1924 Act was passed.[5] See also, *Lem Moon Sing* v. *United States*, 158 U.S. 538, wherein a domiciled alien, who had been excluded after a visit abroad, argued that the doctrine of plenary power to establish procedures governing the entry of aliens previously established in *Nishimura Ekiu* v. *United States*, 142 U.S. 651, and other cases, did not control because of his United States domicile. In the course of the opinion affirming the lower court's judgment that the statute precluded review by the courts, it was said (158 U.S. at 547-548):

> The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which

[5] This concept, that a reentry by a resident alien is in the same category as an original entry has been recognized by this and other Courts in other situations, as for example in determining the period of limitations after "entry" for purposes of deportation. See, e.g., *Hansen* v. *Haff*, 291 U.S. 559, 561-562; *United States ex rel. Volpe* v. *Smith*, 289 U.S. 422, 425; *United States* v. *Corsi*, 287 U.S. 129, 132; *United States ex rel. Claussen* v. *Day*, 279 U.S. 398, 401; *Lewis* v. *Frick*, 233 U.S. 291, 297; *McCandless* v. *United States*, 44 F. 2d 786, 787 (C.A. 3); *United States* v. *Kessler*, 90 F. 2d 327, 328 (C.A. 5); *Bendel* v. *Nagle*, 17 F. 2d 719, 720 (C.A. 9); *United States ex rel. Siegel* v. *Reimer*, 23 F. Supp. 643-644 (S.D. N.Y.), affirmed *per curiam*, *sub nom. United States ex rel. Fisk* v. *Reimer*, 97 F. 2d 1020 (C.A. 2). See also *Lapina* v. *Williams*, 232 U.S. 78, 91.

> they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications. Is a statute passed in execution of that power any less applicable to an alien, who has acquired a commercial domicil within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to reenter it? We think not. * * * While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property * * *. His personal rights when he is in this country and such of his property as is here during his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country, and is beyond its jurisdiction, being an alien, he cannot reenter the United States in violation of the will of the government as expressed in enactments of the law-making power. * * *

Stated otherwise, an alien who has departed from the United States, by that act of departure, loses the protection which stemmed from his prior presence in the country, and upon his attempt to reenter is in no different position from any other

alien applicant for entry. Since, under the *Knauff* decision, alien applicants for entry may be excluded without a hearing, petitioner is in no different position.[6]

The Act of 1918 here involved is emergency legislation. It controls not only the exclusion of aliens, but the entry and departure of citizens. Section 2 (40 Stat. 559) provides:

> After such proclamation as is provided for by the preceding section has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport.

To the argument against the application of the statute to returning citizens, Representative Flood, floor manager for the measure in the House, stated that, "If there are American citizens in foreign lands who are under suspicion, who have gone into Germany since this war was declared, those are people who ought to be now out of this country

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[6] The only other decisions involving the application of 8 C.F.R. 175.57 to returning aliens, *Ex parte Van Laeken*, 81 F. Supp. 79, 81 (N.D. Calif.), and *United States ex rel. Johns v. Shaughnessy*, S.D. N.Y., Civ. No. 53-49 (December 5, 1949, unreported), are in accord with the decision below.

and kept out until the war ends," (56 Cong. Rec. 6066) and that "it is better to take the chance of keeping out an alien, a neutral, or even an American citizen who is perfectly innocent of any wrongdoing to the country rather than take a chance of having aliens and neutrals who are in the pay of our enemies and renegade citizens coming here and going back and forth to give information to the enemy * * *." 56 *id.* 6067. In the Senate, Senator Shields, who was in charge of the bill, stated, "In order to have the protection that this country needs we must have a law applicable to all countries and to all peoples" (*id.* 6194)—it "must apply to everyone"—(*id.* 6248), pointing out that "The great foreign population, many of whom are from the very countries with which we are at war complicates the situation seriously, and we must resort to drastic measures" (*id.* 6195). The reports on the bill (H.R. 4973, 77th Cong.) amending the statute to make it applicable to the present emergency show that Congress intended that the exclusion provisions should apply both to persons who had already been in the country and to those arriving for the first time. S. Rep. 444, 77th Cong., 1st sess.; H. Rep. 754, 77th Cong., 1st sess. It was stated by a Senate floor leader that the very purpose of the bill was to nullify "the practice * * * for aliens and native-born American citizens to travel back and forth between the United States and other countries * * *, peddling information, news, and propaganda." 87 Cong. Rec. 5386.

Congress has thus supplied the answer to petitioner's argument that an exclusion without a hearing is inconsistent with the traditional democratic processes (Pet. 13). Congress has not thought the desirability of adhering to those processes in time of war and national emergency to be sufficient to override the exigencies of the national security. Cf. *Ludecke* v. *Watkins*, 335 U.S. 160. To require the Attorney General, as a condition to the exercise of his exclusion power, to divulge the sources of his information, is as dangerous when a previously domiciled alien is involved as it is in the case where any other arriving alien is concerned. In either situation, the damage to the nation, which the special procedures seek to prevent, would be done. No alien whose presence is deemed inimical to the public interest is "any less undesirable [because he was] previously domiciled in the United States." *Lapina* v. *Williams*, 232 U.S. 78, 92.[7]

Section 307(d)(2) of the Nationality Act of 1940 (54 Stat. 1137, 1142, 8 U.S.C. 707(d)(2)),[8]

[7] We do not mean to say, of course, that petitioner is prevented from presenting any evidence he may have to the Attorney General to overcome the determination that petitioner's entry would be prejudicial to the public interest. As was evidenced in the *Knauff* case, the Attorney General always stands ready to reconsider the evidence in such cases, in order to prevent mistakes in identity and other injustices.

[8] "(d) The following shall be regarded as residence within the United States within the meaning of this chapter:

which petitioner discusses (Pet. 10), is irrelevant. Even assuming that the ownership and registry of the *Sir John Franklin* is such as to bring petitioner's service within the purview of the statute, the sole purpose of the law, as petitioner himself seems to recognize, is to prevent the continuity of residence for naturalization purposes from being interrupted during a seaman's absence. That law does not change the well-established principle discussed, *supra*, pp. 11-13, that any reentry by an alien is a new entry for the purposes of exclusion or deportation. This view has prevailed in prior cases even though the aliens involved never touched foreign soil, as long as the vessels on which they embarked visited a foreign port. *United States* v. *Corsi*, 287 U.S. 129; *McCandless* v. *United States*, 44 F. 2d 786 (C.A. 3); *United States* v. *Kessler*, 90 F. 2d 327 (C.A. 5).

Likewise, there is no merit in petitioner's suggestion (Pet. 5) that the investigation by the Immigration Service in connection with his application for suspension of deportation and the "screening by the Coast Guard" entitles him to special consideration. As we have shown, commitments prior to departure do not preclude exclusion. See

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"(2) Continuous service by a seaman on a vessel or vessels whose home port is in the United States and which are of American registry or American owned, if rendered subsequent to the applicant's lawful entry into the United States for permanent residence and immediately preceding the date of naturalization."

The Chinese Exclusion Case, supra, p. 11; see also, *United States* v. *Kessler,* 90 F. 2d 327, 328 (C.A. 5). This should be particularly true in petitioner's case, since he was on notice, under 8 C.F.R. 175.57, *infra,* pp. 27-29, that he might be subject to exclusion on his return, for the regulation directs that even those "in possession of a permit to enter, or exempted * * * from obtaining a permit to enter," may be excluded. It is fair to assume that the confidential information on which his exclusion was based did not come to light until after his departure.

CONCLUSION

For the above reasons, it is respectfully submitted that the petition for certiorari should be denied.

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APRIL 1952.

APPENDIX

1. Section 1 of the Act of May 22, 1918, c. 81, 40 Stat. 559, as amended by the Act of June 21, 1941, c. 210, § 1, 55 Stat. 252 (22 U.S.C. 223), provides in pertinent part:

> When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—
>
> (a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

* * * * *

2. Presidential Proclamation No. 2523 (6 F.R. 5821), as originally promulgated on November 14, 1941, provided in pertinent part:

WHEREAS, the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (* * * 55 Stat. 252) vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941 [citing 6 F.R. 2617], or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

WHEREAS, the national emergency proclaimed by me on May 27, 1941, is still existing; and

WHEREAS, there unhappily exists a state of war between or among two or more states * * *; and

WHEREAS, the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States * * * :

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, * * * do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States * * *; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

* * * * *

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the

United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

* * * * *

3. Presidential Proclamation No. 2850 (14 F.R. 5173), promulgated August 17, 1949, provides in pertinent part as follows:

* * * * *

1. The said Proclamation No. 2523 is hereby amended so that paragraph numbered (3) thereof, together with the succeeding unnumbered paragraph, shall read as follows:

(3) (a) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe.

(b) No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial

to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General.

(c) Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States.

2. All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation * * *.

* * * * *

4. Pursuant to the authority conferred by Presidential Proclamation No. 2523, the Secretary of State, with the concurrence of the Attorney General, issued regulations (6 F.R. 5911-5918), which were from time to time amended and revised (10 F.R. 5889-5893; 10 F.R. 8995-8996, 8997-9002; 10 F.R. 15332, 15333-15335) and eventually codified, on July 30, 1947, as Part 175 of Title 8 of the Code of Federal Regulations (12 F.R. 5065, 5135-5142). These regulations provide in pertinent part (8 C.F.R. [1949 ed.], Part 175):

Part 175—Control of Persons Entering And Leaving The United States Pursuant To The Act of May 22, 1918, As Amended

* * * * *

Aliens Entering

§ 175.52 *Refusal of permission to enter.* (a) No permit to enter shall be issued to any alien if the permit-issuing authority has reason to believe that the entry of the alien would be prejudicial to the interests of the United States.

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§ 175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purposes of §§ 175.41 to 175.62, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended [anarchists, opposers of organized government, advocates of violent overthrow of the United States Government, etc.]. (* * * 8 U.S.C. 137).

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of, a political or-

ganization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct * * * the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct * * * the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, in-

surrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (* * * 55 Stat. 252 * * *).

(i) Any alien enemy [with specified exceptions].

(j) Any alien found to be, or charged with being, a war criminal * * * or an[y] alien who has been guilty of * * * conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it

was the purpose of the act of June 21, 1941 (55 Stat. 252 * * *) to safeguard.

* * * * *

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.62, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of

Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry[9] shall be held until after the

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[9] Boards of special inquiry are provided for by Sections 16 and 17 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 885-887, as amended, which provide in pertinent part:

Sec. 16 [8 U.S.C., Supp. IV, 152]. * * * Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal. * * *.

Sec. 17 [8 U.S.C. 153.] Boards of special inquiry shall be appointed by either the district director of immigration and naturalization designated by the Commissioner or by the inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner of Immigration and Naturalization, with the approval of the Attorney General, shall from time to time designate as qualified to serve on such boards. * * *. Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as

case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

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may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal * * * to the Attorney General * * *. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General. * * *

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